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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/955,823 | 09/19/2001 | Todd Landon | LL11.12-0070 | 2560 |

164 7590 10/25/2002

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EXAMINER

PADEN, CAROLYN A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1761

DATE MAILED: 10/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/955,823

Applicant(s)

LONDON, TODD

Examiner

Carolyn A Paden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-17 and 33-46 is/are allowed.
- 6) ☒ Claim(s) 1-6, 18-22, 25-32, 43-55, 58 and 61 is/are rejected.
- 7) ☒ Claim(s) 23, 24, 56, 57, 59 and 60 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) J J
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2, 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4, 5, 18, 21, 30, 31, 47 and 52 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Van Hulle (4,409,250).

Van Hulle discloses a food composition for preparing a sugary coated puffed snack product. The weight ratio of puffing media to puffed pieces ranges from 4:1 to 0.1:1. The puffed pieces are dough compositions. The puffing medium is shown at example 2 to include sucrose, corn syrup, coconut oil and water. The product is puffed in a microwave oven. Flavor is included as a minor ingredient (column 6, line 39).

Claims 1-6, 18-20 and 27-32 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Belleson (4,751,090).

Belleson discloses a composition for preparing glazed microwave popcorn. The glazing blend contains oil, sugar, water and lecithin. At column 5, lines 6-25, the composition is described as an oil-in-water

emulsion. Salt is further included as a flavoring ingredient. The amount of unpopped corn to coating is shown at column 4, lines 45-55.

Claims 4, 5, 18-20, 30, 32, 47-49 and 52 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lee (4,927, 645).

Lee discloses a process for making candy coated snack foods, such as popcorn. At example VII the caramel coating syrup is described to contain sugar, corn syrup, molasses, salt, oil, lecithin and water. In examples II and VI the syrup is combined with unpopped popcorn.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22, 25, 26, 53-55, 58 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (4,927,645).

Lee discloses a process for making candy coated snack foods, such as popcorn. At example VII the caramel coating syrup is described to contain sugar, corn syrup, molasses, salt, oil, lecithin and water. In examples II and VI the syrup is combined with unpopped popcorn. At example VII the prepared samples were stored at 70, 80, 90, 100 and 110F

for seven days and then they were evaluated for their tendency to block or aggregate. The claims appear to differ from the reference in the recitation of the storage time. To access the storage life of a food product by an accelerated high temperature method (as shown by Lee) or by a low temperature, long time method (as set forth in the claims) would have been an obvious step in evaluating the commercial utility of a food product. It is appreciated that "potentially reactive ingredient" is not described but fats, oils and sugars are all known to be potentially reactive ingredients upon storage.

Claims 50 and 51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear as to what particular temperatures are contemplated in claims 50 and 51 because the functional language used in claims is unclear. An amendment to the claims clarifying this issue would overcome the rejection.

Claims 50 and 51 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that

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the inventor(s), at the time the application was filed, had possession of the claimed invention. Examiner cannot find the phrase "heated to a temperature sufficient to remove any memory of crystallization from the fat" in the specification. Thus it is unclear as to what particular temperatures are contemplated by this phrase.

Claims 50 and 51 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a particular temperature, does not reasonably provide enablement for a "temperature sufficient to remove any memory of crystallization of the fat". The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims.

Claims 7-17 and 33-46 are allowed.

Claims 23, 24, 56, 57, 59, 60 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

None of the references show the particular flavor or color preservation that is set forth in the claims. Also the references relied upon


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do not set forth a temperature "sufficient to remove any memory" of crystallization.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7am to 3:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


CAROLYN PADEN 10-24-02
PRIMARY EXAMINER
GROUP 1300-1761